

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1188 of 1987

to

FIRST APPEAL No.1195 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ALA BHAGA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Appellants

MR SJ DAVE, AGP for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 25/03/98

ORAL COMMON JUDGEMENT (PER ; C.K.BUCH, J)

This group of appeals is preferred by the claimants of Land Ref. Cases under Sec. 54 of the Land Acq. Act read with Sec. 96 of the C.P.Code, challenging the common judgment and awards passed by the Reference

Court on 27.7.1981 under Sec. 18 of the said Act.

2. The appellants seek to press these appeals mainly on the ground that the market value as determined by the Reference Court is inadequate and the same requires to be enhanced, whereas the ld. counsel appearing for the State has submitted that the market value as determined by the Reference Court is much on a higher side and requires to be reduced.

3. The respondent State of Gujarat has not preferred any appeal against the said judgment and awards under challenge nor the State has filed any cross-objections.

4. The lands in question are acquired under a notification dated 23.8.1979 issued under Sec.4 of the said Act. According to the ld. counsel appearing for the State, the lands acquired under the said acquisition are situated in village Rajavad, Ta; Morbi, Dist.: Rajkot for Demi:II Irrigation Scheme.

5. In this context, we would like to mention that this Bench has decided earlier a group of first appeals namely First Appeal Nos. 467/86 to 511/86 by our judgment and order dated 18/19.3.1998 (hereinafter referred to as the said decision). It is significant to note that the lands concerned in the present case as also in the aforesaid decision were both acquired for the same project i.e. Demi:II Irrigation Scheme and that the lands are located in the very same village namely Rajavad. There is no significant difference between the date of the notification under Sec.4 of the said Act inasmuch as in earlier decision, date of Sec.4 notification was 10.5.1979 whereas the corresponding notification in the present case is dated 23.8.1979. Thus, the only difference is that the notification in the instant group of appeals is later in point of time by about 3 months.

6. Ld. counsel appearing for the parties, have fairly conceded that the reasonings given by this Bench in our said decision while dealing with the first appeals in respect of same project and lands situated in village Rajavad, practically covers all the points raised in the present group of appeals. This being the factual aspect of the matter and as there is no controversy amongst the ld. counsel for the parties about this factual aspect, in our opinion, so far as determination of the market value of the lands under acquisition is concerned, the same would be governed by the market value determined by this Bench in the said decision. Accordingly, we hold

and determine the market value of the lands under acquisition at the rate of Rs. 110/ per Are for Jirayat land (non-irrigated land) and at the rate of Rs. 140/ per Are for Bagayat land (irrigated land).

7. *Ld. AGP Mr. Dave* has tried to point out that in two cases i.e. Land Ref. Case Nos. 98/82 and 99/82, lands are assessed as Bagayat land (irrigated land) and inspite of that the Reference Court has awarded Rs. 5850/ and Rs. 5250/ respectively to the claimants land-holders by way of compensation for wells existing on the lands concerned, is contrary to the settled legal position and, therefore, the amount of compensation awarded to the claimants of aforesaid Land Ref. Cases corresponding to First Appeal Nos. 1193/83 and 1194/83, should be reduced to the aforesaid extent. However, in absence of appeal or cross-objections by the State, it would not be just, legal and/or proper to reduce the amount of compensation awarded to the claimants of the aforesaid two first appeals.

8. Relying on the decision in the case of *Chaya & Ors. v/s Bapusaheb & Ors.*, reported at JT 1993(1) SC P.267, *ld. AGP Mr.Dave* contended that in view of the provisions of O.41 R.33, in absence of cross-appeals or cross-objections, this Court has powers and jurisdiction to reduce the amount of compensation awarded to the land-holders. We have gone through the decision and principle propounded by the Appex Court by this judgment. In the aforesaid decision, keeping in view of the peculiar facts of the case, the Appex Court observed that ".... the appellate Court should have the power to do complete justice. The object of the rule is also to avoid contradictory and inconsistent decisions on the same questions in the same suits. For this purpose, the rule confers a wide discretionary power on the appellate Court to pass such decree or order as sought to have been passed or as the nature of the case may require....".

8.1 There is no dispute as to the principle that for doing complete justice between the parties, this Court can interfere with the judgment and decree under O.41 R.33. However, in view of the peculiar facts of the present case, we do not want to exercise our discretion. It is only in exceptional circumstances where the Court sees any miscarriage of justice or inconsistency in adjudicating the dispute, the Court should exercise said jurisdiction.

9. As discussed earlier, the lands concerned in our said decision as well as the lands acquired in the

present case are of same village and are acquired for the same project, and point of determination of the market value is covered by our said decision. There is, therefore, no cogent and convincing reason for us to take the different view than the one which was taken by us in our said decision.

9.1 In view of the findings in the said decision as well as in First Appeal Nos. 1091/86 to 1103/86 with First Appeal Nos. 115/87 to 126/87 in which the market value of the lands acquired for the same project from the village Rajavad is determined by this Bench, taking away compensation awardable would not be judicious or proper. It is not the say of the ld. AGP Mr. Dave nor there is any evidence to show that the market value of the well is reflected in the determination of the market value of the lands acquired in both the aforesaid Land Ref.Cases. Under the circumstances, in absence of any cogent evidence and especially when the State has chosen not to file any appeal or cross-objections challenging the impugned judgment and awards, the contention of the ld. AGP Mr. Dave for reducing the amount of compensation in aforesaid two First Appeals to the extent of value of the well awarded, cannot be accepted.

10. Ld. Advocate appearing for the appellants has raised some incidental points which require to be considered by us. It is contended on behalf of the claimants that though the claimants land- holders are entitled to solatium at the rate of 30% on the entire amount of compensation, the Reference Court has directed for payment of solatium at the rate of 30% only on the enhanced amount. This contention, being in accordance with legal provisions, requires to be accepted. Accordingly we hold that the claimants are entitled to the amount of solatium at the rate of 30% on the entire amount of compensation and not only on the enhanced amount of compensation.

11. It has also been contended that the claimants are entitled to the interest at the rate of 9% p.a. from the date of handing over possession for the first year and at the rate of 15% p.a. for the subsequent years till the date of payment or deposit as contemplated by Sec.28 of the said Act. Since, there is no controversy on this issue, it requires to be accepted and accordingly we hold that the appellants-claimants shall also be entitled to the interest on the difference of the compensation determined by the Land Acq.Officer and by us herein, at the rate of 9% p.a. from the date of handing over possession for the first year and thereafter at the rate

of 15% p.a. till the date of payment or deposit.

12. Ld. counsel appearing for the claimants-appellants, on query, has fairly conceded that there is no other evidence than three documents which are appreciated and discarded by this Court in our said decision. Hence, in absence of any other evidence as to the increase in market value and in view of our said decision, the market value determined by the Reference court in the present case is confirmed.

13. No other points are urged.

14. These appeals are, therefore, partly allowed to the aforesaid extent with no orders as to cost. Decree accordingly.

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